

TRIZEC PROPERTIES INC
Form S-8 POS
June 26, 2003

As filed with the Securities and Exchange Commission on June 26, 2003
Registration No. 333-87548

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**POST-EFFECTIVE
AMENDMENT NO. 1
TO
FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

TRIZEC PROPERTIES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

33-0387846

(I.R.S. Employer
Identification No.)

233 South Wacker Drive, Chicago, Illinois 60606

(Address of principal executive offices, including zip code)

**Trizec Properties, Inc. 2002 Long Term Incentive Plan
(formerly known as the Trizec Properties, Inc. 2002 Stock Option Plan)**

(Full title of the plan)

Ted R. Jadwin

Senior Vice President and General Counsel

Trizec Properties, Inc.

233 South Wacker Drive, Suite 4600

Chicago, IL 60606

(Name and address of agent for service)

(312) 798-6000

(Telephone number, including area code,
of agent for service)

Copy to:

Thomas Wardell, Esq.

McKenna Long & Aldridge LLP

303 Peachtree Street, N.E., Suite 5300

Atlanta, Georgia 30308

(404) 527-4000

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities To Be Registered | Amount To Be Registered | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|---|-------------------------------|--|--|-------------------------------|
| Common Stock, par value \$0.01 per share | (1) | (1) | (1) | (1) |

(1) No additional securities are being registered and registration fees were paid upon filing of the original Form S-8 Registration Statement (Registration No. 333-87548) for the Trizec Properties, Inc. 2002 Stock Option Plan with the Securities and Exchange Commission (the "Commission") on May 3, 2002. The purpose of this Amendment No. 1 to the Form S-8 Registration Statement is to reflect changes to the 2002 Stock Option Plan, as amended and restated effective May 29, 2003, which is now known as the 2002 Long Term Incentive Plan (the "Plan"). Therefore, no further registration fee is required. The Form S-8 Registration Statement filed on May 3, 2002, as amended by this Amendment No. 1, is referred to herein as the "Registration Statement".

PART I**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The documents containing the information specified in Part I of the instructions to the Registration Statement on Form S-8 will be sent or given to participants in the Plan as required by Rule 428(b)(1) of the rules promulgated under the Securities Act of 1933, as amended (the "Securities Act"). These documents are not being filed with the Commission as a part of this Registration Statement in accordance with Rule 428(b) and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed with the Commission are incorporated as of their respective dates in this Registration Statement by reference:

- (a) The Registrant's Registration Statement on Form 10 (No. 001-16765), filed with the Commission on February 14, 2002 pursuant to Section 12 of the Exchange Act of 1934, as amended (the "Exchange Act"), which includes a description of the Registrant's Common Stock;
- (b) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (No. 001-16765), filed with the Commission on March 27, 2003;
- (c) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2003 (No. 001-16765), filed with the Commission on May 13, 2003; and
- (d) The Registrant's Current Reports on Forms 8-K (No. 001-16765), filed with the Commission on April 11, 2003, April 14, 2003 and May 20, 2003.

All other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment to this Registration Statement, which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents, except to the extent otherwise indicated therein or to the extent that they may be excluded from such incorporation by the applicable rules under the Exchange Act. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

(a) Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") permits the Registrant, under specified circumstances, to indemnify its directors, officers, employees or agents against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties by reason of the fact that they were or are directors, officers, employees or agents of the Registrant, if such directors, officers, employees or agents acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interests of the Registrant and, with respect to any criminal action or proceeding, had no reason to believe their conduct was unlawful. In a derivative action, i.e., one by or in the right of the Registrant, indemnification may be made only for expenses actually or reasonably incurred by directors, officers, employees or agents in connection with the defense or settlement of an action or suit, subject to certain limitations.

(b) The Registrant's certificate of incorporation, as well as its by laws, provides that the Registrant will fully indemnify its officers, directors and employees to the fullest extent possible under the DGCL as described above. In addition, the Registrant's certificate of incorporation provides that a director will have personal liability for money damages to the Registrant or its stockholders for breach of fiduciary duty only for (1) a breach of the director's duty of loyalty, (2) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) unlawful dividends or unlawful stock repurchases or redemptions or (4) any transaction from which the director received an improper personal benefit.

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The Registrant currently maintains insurance covering its officers and directors which (with certain exceptions and within certain limitations) indemnifies them against any liabilities incurred by them in their capacity as directors and officers. If the Registrant becomes liable pursuant to the indemnification of directors and officers from and against any liability and cost with respect to any action or suit against them in respect of their duties of office, the insurance coverage extends to the Registrant, subject to certain deductibles.

ITEM 8. EXHIBITS

| <u>Exhibit Number</u> | <u>Description</u> |
|----------------------------------|---------------------------|
|----------------------------------|---------------------------|

- | | |
|-------|--|
| 4.1 | Fourth Amended and Restated Certificate of Incorporation of Trizec Properties, Inc., filed on February 11, 2002 (incorporated herein by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form 10 (No. 001-16765), filed with the Commission on February 14, 2002). |
| 4.2 | Form of Amended and Restated By Laws of Trizec Properties, Inc. (incorporated herein by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form 10 (No. 001-16765), filed with the Commission on February 14, 2002). |
| 4.3* | Trizec Properties, Inc. 2002 Long Term Incentive Plan (formerly known as the Trizec Properties, Inc. 2002 Stock Option Plan) (Amended and Restated as of May 29, 2003). |
| 4.4 | Certificate of Amendment to Fourth Amended and Restated Certificate of Incorporation of Trizec Properties, Inc. (incorporated herein by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-8 (No. 333-87548), filed with the Commission on May 3, 2002). |
| 5* | Opinion of McKenna Long & Aldridge LLP. |
| 23.1* | Consent of PricewaterhouseCoopers LLP. |
| 23.2* | Consent of McKenna Long & Aldridge LLP (included in its opinion filed as Exhibit 5 hereto). |
| 24.1* | Powers of Attorney. |

* Filed herewith.

ITEM 9. UNDERTAKINGS

A. RULE 415 OFFERING.

The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, because this Registration Statement is on Form S-8, paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. Subsequent Documents Incorporated by Reference.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

C. Indemnification of Officers, Directors and Controlling Persons.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described under Item 6 above, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Chicago, State of Illinois, on June 26, 2003.

TRIZEC PROPERTIES, INC.
(Registrant)

By: /s/ Timothy H. Callahan
Timothy H. Callahan
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities indicated as of June 26, 2003.

| <u>Signatures</u> | <u>Title</u> |
|---|--|
| <u>/s/ Timothy H. Callahan</u> Timothy H. Callahan | President, Chief Executive Officer and Director (Principal Executive Officer) |
| <u>/s/ Michael C. Colleran</u> Michael C. Colleran | Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) |
| <u>/s/ Peter Munk*</u> Peter Munk | Chairman of the Board of Directors |
| <u>/s/ Brian Mulronev*</u> Brian Mulronev | Director |
| <u>/s/ Glenn Rufrano*</u> Glenn Rufrano | Director |
| <u>/s/ Richard Thomson*</u> Richard Thomson | Director |
| <u>/s/ Polyvios Vintiadis*</u> Polyvios Vintiadis | Director |
| <u>/s/ Stephen Volk*</u> Stephen Volk | Director |

/s/ Casey Wold
Casey Wold

Executive Vice President, Chief Operating Officer, Chief
Investment Officer and Director

*By: /s/ Ted R. Jadwin
Ted R. Jadwin
as Attorney-in-Fact

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